THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.21212 of 1996
Dated:22-12-2006

Between:

Duvvi Challayamma and three others

Petitioners

And

Government of A.P. rep. by its Secretary,
Ministry of Revenue, Secretariat Buildings,
Hyderabad and two others.

Respondents

THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.21212 of 1996

ORDER:

1. This writ petition has been instituted questioning the validity of a notification issued by the second respondent- Special Officer-cum-Competent Authority, Urban Land Ceiling, Visakhapatnam, declaring the father of the writ petitioners 2 to 4 and the husband of the first petitioner as holding urban land in excess of the ceiling limit.

2. The first petitioner is said to be the wife of one late Duvvi Paidayya, whereas the petitioners 2 to 4 are his children. It is not in dispute that in terms of Section 6 (1) of the Urban Land (Ceiling and Regulation) Act,1976, (hereinafter be referred to as 'the Act') the said Duvvi Paidayya who is holding certain extent of vacant land had filed his declaration on 15-09-1976. The statement of declaration in Form-I filed by Duvvi Paidayya made it abundantly clear that he has filed the said statement on behalf of the "Hindu Undivided Family" of which he is the Kartha or Manager. He has also given the necessary details of his family particulars as well as the extent of land held by the said family. He has also claimed that the entire extent of land, which is owned by Hindu Undivided Family or H.U.F. is an agricultural land though the same is included in the master plan of Visakhapatnam Urban Area. It is further not in dispute that an enquiry into the said statement is contemplated in terms of

Section 8 of the Act, wherein every draft statement prepared under sub section 1 of Section 8 of the Act shall be served on the person concerned together with a notice inviting objections, if any, for the draft statement to be preferred within 30 days thereafter. Only after complying with this procedure contemplated under Section 8 of the Act, a final statement determining the total extent of excess vacant land can be determined so that the same can be acquired in accordance with the procedure contemplated under Section 10 of the Act. The writ petitioners have specifically asserted that Duvvi Paidayya has not been served with any such notice under Section 8 of the Act and therefore, the determination of excess land for which the final statement has been prepared in terms of Section 9 of the Act followed by the acquisition of the excess vacant land so determined under Section 10 of the Act are all illegal.

3. A counter affidavit has been filed pointing out that the final statement has been prepared on 29-10-1980 in the case inasmuch as the notices sent under Section 8 of the Act inviting objections have not brought forth any such objections. It would be useful to extract what the counter affidavit filed by Special Officer, Urban Land Ceiling , Visakhapatnam would aver in this regard:

> *"After due enquiry, as the Competent Authority deemed fit, draft statement u/s.8(1) together with notice u/s.8(3) was issued to Sri Duvvi Pydayya determining him as surplus land holder for 8577 sq. mts., in S.No.47 part of Sivajipalem H/o. Waltair ward. He was directed to file objections if ay, against the said draft statement u/s. 8 (1) within 30 days from the date of receipt of the statement u/s.8(1). When no objections were raised by the declarant, the final statement u/s.9 of the Act was issued to him on 19.11.1981 and it was sent to him by Registered Post with Acknowledgement due finally declaring him as surplus land holder of 0.8577 sq.mts., as shown below:*

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S.No.	Name of the village	S.No.	Total extent sq.mts.,	Extent allowed sq.mts.,	Surplus determined sq.mts.,
1)	Shivajipalem H/o.Waltair ward	47p	0.9794	0.1217	0.8577
2)	Pithapuram Colony	-	0.0283	0.0283	-
			1.0077	0.1500	0.8577

The notification u/s. 10(1) was issued on 21.11.1981. ”

4. Since the respondents have asserted that notices under Section 8 of the Act inviting objections for the draft statement prepared by them have been served, I called upon the learned Government Pleader to make available the record. The record discloses that a notice has been prepared on 25-03-1977 by the Special Officer-cum-Competent Authority directing Duvvi Paidayya to supply certain omissions noticed from the statement filed by him under Section 6(1) of the Act on 15-09-1976 and for the said purpose, the said Duvvi Paidayya had been called upon to appear before the Deputy Tahasildar, Urban Land Ceiling on 31-03-1977. However, the file does not contain as to the further steps taken in the matter by the Deputy Tahasildar as to whether he has secured the information found to be missing from the statement filed by the said Duvvi Paidayya under Section 6(1) of the Act or not. But at page 29, a notice of draft statement prepared in terms of Section 8 of the Act was found. The said notice was obviously prepared on 29-10-1980 as can be gathered from the date appended below the signature of the Special Officer. Thus the draft declaration can be said to have been prepared on 29-10-1980 and hence it could have been sent for service on Duvvi Paidayya any time subsequent thereto only. The writ

petitioners have asserted and also demonstrated with reference to an extract secured from the Municipal Corporation of Visakhapatnam that the said Duvvi Paidayya died on 15-01-1980 at the local King George Hospital. Therefore, the draft statement which had been prepared on 29-10-1980 and which is required under law to be served on the said Duvvi Paidayya could not have been served on the said individual inasmuch as he had died by the time. Unfortunately the file does not disclose as to the measures or steps taken for serving the said statement on the individual and in his absence on his legal representatives or any other adult member of his family. There is no material available in the file to vouch that the notice dated 29-10-1980 has been served on the said Duvvi Paidayya or on any one else. In fact, the notice had not evoked the necessary response is pointed out in one another notice which has been prepared on 15-6-1981 in C.C.,No. 8(1)/6(1)/6291 directing the said Duvvi Paidayya that as no objections have been received from him in response to the notice dated 29-10-1980, a final notice is issued providing a week's time for receipt of objections against the draft statement. Unfortunately the file does not even disclose the proof of service of this notice dated 15-06-1981 either on Duvvi Paidayya or in his absence on any member of his family. It is therefore, crystal clear that before the final statement is prepared and published under Section 9 of the Act, the declarant- Duvvi Paidayya or any other person representing his estate had not been provided with the necessary notice to enable him to participate in the enquiry and raise the objections for the purpose of correct determination of vacant land held by the declarant in excess of the ceiling limit. It would be useful in this regard to refer to the judgment rendered by this court in **M/s. L.S. and Co, rep. by Managing Partner Vs. State of A.P. and others.**[1] Justice

B.Sudershan Reddy (as the learned Chief Justice then was) has dealt with this issue in the following terms:

> *" Evidently, the whole proceedings wee conducted by the 2nd respondent in a very casual manner. It appears that the 2nd respondent never applied his mind to the contents of the statements submitted by the predecessors-in-title of the petitioner on one hand and the 4th respondent on the other. The 2nd respondent should have realized that he is discharging quasi-judicial functions in making an enquiry in to the details of the land held by the persons furnishing the statements under Section 6(1) of the Act. Intricate questions are to be resolved by the 2nd respondent in exercise of the powers conferred upon him under Sections 8 and 9 of the Act. The scheme of the Act contemplates issuance of notice and hearing of objections of the persons furnishing the statements and all other interested persons. The Act gives such a protection to all the concerned at every stage of the proceedings. After all any decision of the Special Officer and Competent Authority under the provisions of the said Act are fraught with serious consequences in respect of the urban property. Rights in immovable properties cannot be allowed to be adjudicated by the quasi-judicial authorities like the Special Officer and Competent Authority in a casual and perfunctory manner. The scheme of the Act and particularly Section 8 and 9 of the Act and the rules framed hereunder would show that the procedure to be adopted by the Special Officer and Competent Authority is to be reasonable and fair. The scheme of the Act ensures an elaborate hearing by the Special Officer and Competent authority in adjudication of the statements filed by the persons holding the vacant land. Any deviation in this regard would have to be viewed very seriously.*
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> *There is absolutely no doubt whatsoever that the whole decision making process in the instant case is totally vitiated. The 2nd respondent was under the statutory obligation to issue and serve notices upon the predecessor-in-title of the petitioner herein before disposing of the statements filed by the 4th respondent. Non-issuance of notice and its service upon interested persons is fatal."*

5. Thus it is conclusively held that the procedure contemplated under Sections 8 and 9 of the Act have got to be followed and adopted scrupulously. Since I am satisfied that by the time when draft statement in terms of Section 8 of the Act was prepared by the Special Officer-cum-Competent Authority, Urban Land Ceiling, Visakhapatnam on 29-10-1980, the declarant- Duvvi Paidayya died, there was no service of notice on the declarant or any person representing

his estate. Consequently, the petitioners herein who are said to be the legal representatives of the deceased-Duvvi Paidayya and thus succeeding to his estate are certainly adversely affected. The fact that the subsequent notifications have been gazetted and consequently common knowledge can be ascribed to one and all from such gazette publications is of no avail to the State, for, the stage for publication of the notifications in the gazette in terms of Section 10 of the Act would arise only after a valid exercise was accomplished in terms of Section 9 of the Act. Until and unless final statement has been prepared under Section 9 of the Act, no notification could possibly be issued under Section 10 of the Act. Therefore, the fact that the notifications under sub section 3 and sub section 5 of Section 10 of the Act have been got gazetted and thus knowledge can be ascribed to one and all through such publications is of no avail.

6. I have therefore, no hesitation to allow this writ petition and set-aside the impugned notifications and remit the matter back to the Special Officer-cum-Competent Authority, Urban Land Ceiling, Visakhapatnam to redetermine the excess land held by the declarant, after conducting enquiry in accordance with law. To further obviate the time limit, the writ petitioners are directed to present themselves before the Urban Land Ceiling Authority and present the objections, if any for the draft statement prepared on 29-10-1980, a copy of which has been permitted by me to be served on the learned counsel for the writ petitioners today. It is open to the Special Officer-cum-Competent Authority, Urban Land Ceiling to either conduct the enquiry on 31-01-2007 or on any other subsequent date with prior intimation to the petitioners or their authorized representative as the case may be. In this view of the matter, all other questions have been kept open.

7. Subject to the above, the writ petition is allowed. No order as to costs.

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NOOTY RAMAMOHANA RAO,J

22-12-2006
Stp

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[1] **AIR 1996 A.P. 157**